

HB0037S02 compared with HB0037S01

~~{deleted text}~~ shows text that was in HB0037S01 but was deleted in HB0037S02.

inserted text shows text that was not in HB0037S01 but was inserted into HB0037S02.

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~~{Representative Steve Eliason}~~Senator Wayne A. Harper proposes the following substitute bill:

VOTER SIGNATURE VERIFICATION AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Steve Eliason

Senate Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill addresses voter signature verification, voter accessibility, and related issues.

Highlighted Provisions:

This bill:

- ▶ provides guidance for determining when a signature submitted with a ballot corresponds to a signature in a voter registration record;
- ▶ establishes requirements for contacting a voter when the voter's ballot is rejected;
- ▶ establishes record-keeping and reporting requirements in relation to rejected ballots;
- ▶ requires an election officer to provide an accessible voting option for a voter with a disability;
- ▶ requires the director of elections to make rules regarding signature verification for

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individuals who are unable to sign their name consistently due to a disability;

- ▶ grants rulemaking authority to establish criteria, processes, and training in relation to signature comparison;
- ▶ requires that election notices include instructions for how a voter with a disability may obtain information on voting in an accessible manner;
- ▶ addresses the disclosure of certain information relating to a voter whose ballot is rejected;
- ▶ makes it unlawful for an election officer to willfully neglect, or act corruptly in discharging, the election officer's duty; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

~~{ None }~~ This bill provides a coordination clause.

Utah Code Sections Affected:

AMENDS:

20A-3a-202, as last amended by Laws of Utah 2022, Chapters 18, 121, and 156

20A-3a-401, as last amended by Laws of Utah 2022, Chapter 392 and last amended by Coordination Clause, Laws of Utah 2022, Chapter 392

20A-5-101, as last amended by Laws of Utah 2021, First Special Session, Chapter 15

20A-5-701, as last amended by Laws of Utah 2013, Chapter 253

Utah Code Sections Affected by Coordination Clause:

20A-3a-401, as last amended by Laws of Utah 2022, Chapter 392

20A-3a-501, as last amended by Laws of Utah 2020, Sixth Special Session, Chapter 17

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **20A-3a-202** is amended to read:

20A-3a-202. Conducting election by mail.

(1) (a) Except as otherwise provided for an election conducted entirely by mail under Section 20A-7-609.5, an election officer shall administer an election primarily by mail, in accordance with this section.

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(b) An individual who did not provide valid voter identification at the time the voter registered to vote shall provide valid voter identification before voting.

(2) An election officer who administers an election:

(a) shall in accordance with Subsection (3), no sooner than 21 days before election day and no later than seven days before election day, mail to each active voter within a voting precinct:

(i) a manual ballot;

(ii) a return envelope;

(iii) instructions for returning the ballot that include an express notice about any relevant deadlines that the voter must meet in order for the voter's vote to be counted;

(iv) for an election administered by a county clerk, information regarding the location and hours of operation of any election day voting center at which the voter may vote or a website address where the voter may view this information;

(v) for an election administered by an election officer other than a county clerk, if the election officer does not operate a polling place or an election day voting center, a warning, on a separate page of colored paper in bold face print, indicating that if the voter fails to follow the instructions included with the ballot, the voter will be unable to vote in that election because there will be no polling place for the voting precinct on the day of the election; and

(vi) ~~after May 1, 2022,~~ instructions on how a voter may sign up to receive electronic ballot status notifications via the ballot tracking system described in Section 20A-3a-401.5;

(b) may not mail a ballot under this section to:

(i) an inactive voter, unless the inactive voter requests a manual ballot; or

(ii) a voter whom the election officer is prohibited from sending a ballot under Subsection (10)(c)(ii); ~~and~~

(c) shall, on the outside of the envelope in which the election officer mails the ballot, include instructions for returning the ballot if the individual to whom the election officer mails the ballot does not live at the address to which the ballot is sent~~[-]~~;

(d) shall provide a method of accessible voting to a voter with a disability who is not able to vote by mail; and

(e) shall include, on the election officer's website and with each ballot mailed, instructions regarding how a voter described in Subsection (2)(d) may vote.

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(3) (a) An election officer who mails a manual ballot under Subsection (2) shall mail the manual ballot to the address:

(i) provided at the time of registration; or

(ii) if, at or after the time of registration, the voter files an alternate address request form described in Subsection (3)(b), the alternate address indicated on the form.

(b) The lieutenant governor shall make available to voters an alternate address request form that permits a voter to request that the election officer mail the voter's ballot to a location other than the voter's residence.

(c) A voter shall provide the completed alternate address request form to the election officer no later than 11 days before the day of the election.

(4) The return envelope shall include:

(a) the name, official title, and post office address of the election officer on the front of the envelope;

(b) a space where a voter may write an email address and phone number by which the election officer may contact the voter if the voter's ballot is rejected;

(c) a printed affidavit in substantially the following form:

"County of ____ State of ____

I, ____, solemnly swear that: I am a qualified resident voter of the ____ voting precinct in ____ County, Utah and that I am entitled to vote in this election. I am not a convicted felon currently incarcerated for commission of a felony.

Signature of Voter"; and

(d) a warning that the affidavit must be signed by the individual to whom the ballot was sent and that the ballot will not be counted if the signature on the affidavit does not match the signature on file with the election officer of the individual to whom the ballot was sent.

(5) If the election officer determines that the voter is required to show valid voter identification, the election officer may:

(a) mail a ballot to the voter;

(b) instruct the voter to include a copy of the voter's valid voter identification with the return ballot; and

(c) provide instructions to the voter on how the voter may sign up to receive electronic

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ballot status notifications via the ballot tracking system described in Section 20A-3a-401.5.

(6) An election officer who administers an election shall:

(a) (i) before the election, obtain the signatures of each voter qualified to vote in the election; or

(ii) obtain the signature of each voter within the voting precinct from the county clerk; and

(b) maintain the signatures on file in the election officer's office.

(7) Upon receipt of a returned ballot, the election officer shall review and process the ballot under Section 20A-3a-401.

(8) A county that administers an election:

(a) shall provide at least one election day voting center in accordance with [~~Chapter 3a, Part 7, Election Day Voting Center~~] Part 7, Election Day Voting Center, and at least one additional election day voting center for every 5,000 active voters in the county who have requested to not receive a ballot by mail;

(b) shall ensure that each election day voting center operated by the county has at least one voting device that is accessible, in accordance with the Help America Vote Act of 2002, Pub. L. No. 107-252, for individuals with disabilities;

(c) may reduce the early voting period described in Section 20A-3a-601, if:

(i) the county clerk conducts early voting on at least four days;

(ii) the early voting days are within the period beginning on the date that is 14 days before the date of the election and ending on the day before the election; and

(iii) the county clerk provides notice of the reduced early voting period in accordance with Section 20A-3a-604;

(d) is not required to pay return postage for a ballot; and

(e) is subject to an audit conducted under Subsection (9).

(9) (a) The lieutenant governor shall:

(i) develop procedures for conducting an audit of affidavit signatures on ballots cast in an election conducted under this section; and

(ii) after each primary, general, or special election conducted under this section, select a number of ballots, in varying jurisdictions, to audit in accordance with the procedures developed under Subsection (9)(a)(i).

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(b) The lieutenant governor shall post the results of an audit conducted under this Subsection (9) on the lieutenant governor's website.

(10) (a) An individual may request that the election officer not send the individual a ballot by mail in the next and subsequent elections by submitting a written request to the election officer.

(b) An individual shall submit the request described in Subsection (10)(a) to the election officer before 5 p.m. no later than 60 days before an election if the individual does not wish to receive a ballot by mail in that election.

(c) An election officer who receives a request from an individual under Subsection (10)(a):

(i) shall remove the individual's name from the list of voters who will receive a ballot by mail; and

(ii) may not send the individual a ballot by mail for:

(A) the next election, if the individual submits the request described in Subsection (10)(a) before the deadline described in Subsection (10)(b); or

(B) an election after the election described in Subsection (10)(c)(ii)(A).

(d) An individual who submits a request under Subsection (10)(a) may resume the individual's receipt of a ballot by mail by submitting a written request to the election officer.

Section 2. Section **20A-3a-401** is amended to read:

20A-3a-401. Custody of voted ballots mailed or deposited in a ballot drop box -- Disposition -- Notice.

(1) This section governs ballots returned by mail or via a ballot drop box.

(2) (a) Poll workers shall open return envelopes containing manual ballots that are in the custody of the poll workers in accordance with ~~Subsection (2)(b)~~ this section.

(b) The poll workers shall, first, compare the signature of the voter on the affidavit of the return envelope to the signature of the voter in the voter registration records.

(3) After complying with Subsection (2), the poll workers shall determine whether:

(a) the signatures correspond;

(b) the affidavit is sufficient;

(c) the voter is registered to vote in the correct precinct;

(d) the voter's right to vote the ballot has been challenged;

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(e) the voter has already voted in the election;
(f) the voter is required to provide valid voter identification; and
(g) if the voter is required to provide valid voter identification, whether the voter has provided valid voter identification.

(4) (a) The poll workers shall take the action described in Subsection (4)(b) if the poll workers determine ~~[that]~~:

~~[(i) the signatures correspond;]~~

(i) in accordance with the rules made under Subsection (11):

(A) that the signature on the affidavit of the return envelope is reasonably consistent with the individual's signature in the voter registration records; or

(B) for an individual who checks the box described in Subsection (5)(c)(v), that the signature is verified by alternative means;

(ii) that the affidavit is sufficient;

(iii) that the voter is registered to vote in the correct precinct;

(iv) that the voter's right to vote the ballot has not been challenged;

(v) that the voter has not already voted in the election; and

(vi) for a voter required to provide valid voter identification, that the voter has provided valid voter identification.

(b) If the poll workers make all of the findings described in Subsection (4)(a), the poll workers shall:

(i) remove the manual ballot from the return envelope in a manner that does not destroy the affidavit on the return envelope;

(ii) ensure that the ballot does not unfold and is not otherwise examined in connection with the return envelope; and

(iii) place the ballot with the other ballots to be counted.

(c) If the poll workers do not make all of the findings described in Subsection (4)(a), the poll workers shall:

(i) disallow the vote;

(ii) without opening the return envelope, ~~[mark {"rejected," and the reason for the rejection, } across the face of the return envelope {;}]~~ record the ballot as "rejected" and state the reason for the rejection; and

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~~[(A) "Rejected as defective"; or]~~

~~[(B) "Rejected as not a registered voter"; and]~~

(iii) place the return envelope, unopened, with the other rejected return envelopes.

(5) (a) If the poll workers reject an individual's ballot because the poll workers determine, in accordance with rules made under Subsection (11), that the signature on the return envelope ~~[does not {} match]~~ ~~[correspond]~~ is not reasonably consistent with the individual's signature in the voter registration records, the election officer shall:

(i) contact the individual in accordance with Subsection ~~[(7) by mail, email, text message, or phone, and]~~ (6); and

(ii) inform the individual:

~~[(+)]~~ (A) that the individual's signature is in question;

~~[(+)]~~ (B) how the individual may resolve the issue; and

~~[(+)]~~ (C) that, in order for the ballot to be counted, the individual is required to deliver to the election officer a correctly completed affidavit, provided by the county clerk, that meets the requirements described in Subsection ~~[(5)(b)]~~ (5)(c).

(b) The election officer shall ensure that the notice described in Subsection (5)(a) includes:

(i) when communicating the notice by mail, a printed copy of the affidavit described in Subsection (5)(c) and a courtesy reply envelope;

(ii) when communicating the notice electronically, a link to a copy of the affidavit described in Subsection (5)(c) or information on how to obtain a copy of the affidavit; or

(iii) when communicating the notice by phone, either during a direct conversation with the voter or in a voicemail, arrangements for the voter to receive a copy of the affidavit described in Subsection (5)(c), either in person from the clerk's office, by mail, or electronically.

~~[(+)]~~ (c) An affidavit described in Subsection ~~[(5)(a)(iii)]~~ (5)(a)(ii)(C) shall include:

(i) an attestation that the individual voted the ballot;

(ii) a space for the individual to enter the individual's name, date of birth, and driver license number or the last four digits of the individual's social security number;

(iii) a space for the individual to sign the affidavit; ~~[and]~~

(iv) a statement that, by signing the affidavit, the individual authorizes the lieutenant

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governor's and county clerk's use of the individual's signature on the affidavit for voter identification purposes[-]; and

(v) a check box accompanied by language in substantially the following form: "I am a voter with a qualifying disability under the Americans with Disabilities Act that impacts my ability to sign my name consistently. I can provide appropriate documentation upon request. To discuss accommodations, I can be contacted at _____".

~~[(c)]~~ (d) In order for an individual described in Subsection (5)(a) to have the individual's ballot counted, the individual shall deliver the affidavit described in Subsection ~~[(5)(b)]~~ (5)(c) to the election officer.

~~[(d)]~~ (e) An election officer who receives a signed affidavit under Subsection ~~[(5)(c)]~~ (5)(d) shall immediately:

(i) scan the signature on the affidavit electronically and keep the signature on file in the statewide voter registration database developed under Section 20A-2-109; ~~[and]~~

(ii) if the election officer receives the affidavit no later than 5 p.m. three days before the day on which the canvass begins, count the individual's ballot[-]; and

(iii) if the check box described in Subsection (5)(c)(v) is checked, comply with the rules described in Subsection (11)(c).

~~[(6) If the poll workers reject an individual's ballot for any reason, other than the reason described in Subsection (5)(a), the election officer shall notify the individual of the rejection in accordance with Subsection (7) by mail, email, text message, or phone and specify the reason for the rejection.]~~

(6) (a) The election officer shall, within two business days after the day on which an individual's ballot is rejected, notify the individual of the rejection and the reason for the rejection, by phone, mail, email, or SMS text message, unless:

(i) the ballot is cured within one business day after the day on which the ballot is rejected; or

(ii) the ballot is rejected because the ballot is received late or for another reason that cannot be cured.

(b) If an individual's ballot is rejected for a reason described in Subsection (6)(a)(ii), the election officer shall notify the individual of the rejection and the reason for the rejection by phone, mail, email, or SMS text message, within the later of:

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(i) 30 days after the day of the rejection; or

(ii) 30 days after the day of the election.

(c) The election officer may, when notifying an individual by phone under this

Subsection (6), use auto-dial technology.

~~[(7) An election officer who is required to give notice under Subsection (5) or (6) shall give the notice no later than:]~~

~~[(a) if the election officer rejects the ballot before election day:]~~

~~[(i) one business day after the day on which the election officer rejects the ballot, if the election officer gives the notice by email or text message; or]~~

~~[(ii) two business days after the day on which the election officer rejects the ballot, if the election officer gives the notice by postal mail or phone;]~~

~~[(b) seven days after election day if the election officer rejects the ballot on election day; or]~~

~~[(c) seven days after the canvass if the election officer rejects the ballot after election day and before the end of the canvass.]~~

~~[(8)]~~ (7) An election officer may not count the ballot of an individual whom the election officer contacts under Subsection (5) or (6) unless:

(a) the election officer receives a signed affidavit from the individual under Subsection (5)(b) or is otherwise able to establish contact with the individual to confirm the individual's identity; and

(b) the affidavit described in Subsection ~~[(8)]~~ (7)(a) is received, or the confirmation described in Subsection ~~[(8)]~~ (7)(a) occurs, no later than 5 p.m. three days before the day on which the canvass begins.

~~[(9)]~~ (8) The election officer shall retain and preserve the return envelopes in the manner provided by law for the retention and preservation of ballots voted at that election.

(9) (a) The election officer shall record the following in the database used to verify signatures:

(i) any initial rejection of a ballot under Subsection (4)(c), within one business day after the day on which the election officer rejects the ballot; and

(ii) any resolution of a rejection of a ballot under Subsection (7), within one business day after the day on which the ballot rejection is resolved.

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(b) An election officer shall include, in the canvass report, a final report of the disposition of all rejected and resolved ballots, including, for ballots rejected, the following:

- (i) the number of ballots rejected because the voter did not sign the voter's ballot; and
- (ii) the number of ballots rejected because the voter's signatures on the ballot, and in records on file, do not correspond.

(10) Willful failure to comply with this section constitutes willful neglect of duty under Section 20A-5-701.

(11) The director of elections within the Office of the Lieutenant Governor shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish:

(a) criteria and processes for use by poll workers in determining if a signature corresponds with the signature on file for the voter under Subsections (3)(a) and (4)(a)(i)(A);

(b) training and certification requirements for election officers and employees of election officers regarding the criteria and processes described in Subsection (11)(a); and

(c) in compliance with Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. Secs. 12131 through 12165, an alternative means of verifying the identity of an individual who checks the box described in Subsection (5)(c)(v).

(12) If, in response to a request, and in accordance with the requirements of law, an election officer discloses the name or address of voters whose ballots have been rejected and not yet resolved, the election officer shall:

(a) make the disclosure within two business days after the day on which the request is made;

(b) respond to each request in the order the requests were made; and

(c) make each disclosure in a manner, and within a period of time, that does not reflect favoritism to one requestor over another.

Section 3. Section **20A-5-101** is amended to read:

20A-5-101. Notice of election.

(1) On or before November 15 in the year before each regular general election year, the lieutenant governor shall prepare and transmit a written notice to each county clerk that:

- (a) designates the offices to be filled at the next year's regular general election;
- (b) identifies the dates for filing a declaration of candidacy, and for submitting and

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certifying nomination petition signatures, as applicable, under Sections 20A-9-403, 20A-9-407, and 20A-9-408 for those offices; and

(c) contains a description of any ballot propositions to be decided by the voters that have qualified for the ballot as of that date.

(2) (a) No later than seven business days after the day on which the lieutenant governor transmits the written notice described in Subsection (1), each county clerk shall provide notice, in accordance with Subsection (3):

(i) by posting notice in a conspicuous place most likely to give notice of the election to the voters in each voting precinct within the county;

(ii) (A) by publishing notice in a newspaper of general circulation in the county;

(B) by posting one notice, and at least one additional notice per 2,000 population of the county, in places within the county that are most likely to give notice of the election to the voters in the county, subject to a maximum of 10 notices; or

(C) by mailing notice to each registered voter in the county;

(iii) by posting notice on the Utah Public Notice Website, created in Section 63A-16-601, for seven days before the day of the election; and

(iv) by posting notice on the county's website for seven days before the day of the election.

(b) The county clerk shall prepare an affidavit of the posting under Subsection (2)(a)(i), showing a copy of the notice and the places where the notice was posted.

(3) The notice described in Subsection (2) shall:

(a) designate the offices to be voted on in that election; and

(b) identify the dates for filing a declaration of candidacy for those offices.

(4) Except as provided in Subsection (6), before each election, the election officer shall give printed notice of the following information:

(a) the date of election;

(b) the hours during which the polls will be open;

(c) the polling places for each voting precinct, early voting polling place, and election day voting center;

(d) the address of the Statewide Electronic Voter Information Website and, if available, the address of the election officer's website, with a statement indicating that the election officer

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will post on the website any changes to the location of a polling place and the location of any additional polling place;

(e) a phone number that a voter may call to obtain information regarding the location of a polling place; ~~and~~

(f) the qualifications for persons to vote in the election~~[-]; and~~

(g) instructions regarding how an individual with a disability, who is not able to vote a manual ballot by mail, may obtain information on voting in an accessible manner.

(5) The election officer shall provide the notice described in Subsection (4):

(a) (i) by publishing the notice in a newspaper of general circulation in the jurisdiction to which the election pertains, at least two days before the day of the election;

(ii) at least two days before the day of the election, by posting one notice, and at least one additional notice per 2,000 population of the jurisdiction, in places within the jurisdiction that are most likely to give notice of the election to the voters in the jurisdiction, subject to a maximum of 10 notices; or

(iii) by mailing the notice to each registered voter who resides in the jurisdiction to which the election pertains at least five days before the day of the election;

(b) by posting notice on the Utah Public Notice Website, created in Section 63A-16-601, for two days before the day of the election; and

(c) if the jurisdiction has a website, by posting notice on the jurisdiction's website for two days before the day of the election.

(6) Instead of including the information described in Subsection (4) in the notice, the election officer may give printed notice that:

(a) is entitled "Notice of Election";

(b) includes the following: "A [indicate election type] will be held in [indicate the jurisdiction] on [indicate date of election]. Information relating to the election, including polling places, polling place hours, and qualifications of voters may be obtained from the following sources:"; and

(c) specifies the following sources where an individual may view or obtain the information described in Subsection (4):

(i) if the jurisdiction has a website, the jurisdiction's website;

(ii) the physical address of the jurisdiction offices; and

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(iii) a mailing address and telephone number.

Section 4. Section **20A-5-701** is amended to read:

20A-5-701. Willful neglect of duty or corrupt conduct -- Penalty.

(1) It is unlawful for [~~any~~] an election officer or poll worker to willfully neglect the election officer's or poll worker's duty or to willfully act corruptly in discharging the election officer's or poll worker's duty.

(2) [~~Any~~] An election officer or poll worker who violates this section is guilty of a third degree felony.

Section 5. Coordinating H.B. 37 with H.B. 162 and H.B. 448 -- Substantive and technical amendments.

(1) If this H.B. 37, H.B. 162, Voter Accessibility Amendments, and H.B. 448, Election Changes, all pass and become law, it is the intent of the Legislature that the Office of Legislative Research and General Counsel shall prepare the Utah Code database for publication, as follows:

(a) the changes to Subsection 20A-3a-401(4)(a) in H.B. 37 supersede the changes to Subsection 20A-3a-401(4)(a) in H.B. 162 and H.B. 448;

(b) the changes to Subsection 20A-3a-401(5) in H.B. 37 supersede the changes to Subsection 20A-3a-401(5) in H.B. 162 and H.B. 448, except that, in Subsection 20A-3a-401(5)(e)(i) in H.B. 37, the reference to "Section 20A-2-109" will change to "Section 20A-2-502";

(c) enacted Subsection 20A-3a-401(10) in H.B. 162 does not take effect; and

(d) enacted Subsection 20A-3a-401(9) in H.B. 448 does not take effect.

(2) If this H.B. 37 and H.B. 162, Voter Accessibility Amendments, both pass and become law, but H.B. 448, Election Changes, does not pass, it is the intent of the Legislature that the Office of Legislative Research and General Counsel shall prepare the Utah Code database for publication, as follows:

(a) the changes to Subsection 20A-3a-401(4)(a) in H.B. 37 supersede the changes to Subsection 20A-3a-401(4)(a) in H.B. 162;

(b) the changes to Subsection 20A-3a-401(5)(e)(iii) in H.B. 37 supersede the changes to Subsection 20A-3a-401(5)(e)(iii) in H.B. 162; and

(c) enacted Subsection 20A-3a-401(10) in H.B. 162 does not take effect.

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(3) If this H.B. 37 and H.B. 448, Election Changes, both pass and become law, but H.B. 162, Voter Accessibility Amendments, does not pass:

(a) the changes to Subsection 20A-3a-401(4)(a) in H.B. 37 supersede the changes to Subsection 20A-3a-401(4)(a) in H.B. 448;

(b) the changes to Subsection 20A-3a-401(5) in H.B. 37 supersede the changes to Subsection 20A-3a-401(5) in H.B. 448, except that, in Subsection 20A-3a-401(5)(e)(i) in H.B. 37, the reference to "Section 20A-2-109" will change to "Section 20A-2-502"; and

(c) enacted Subsection 20A-3a-401(9) in H.B. 448 does not take effect.